

PLB 1837  
REWARD 2  
MILLIN 76-17

PARTIES TO DISPUTE:

Brotherhood of Maintenance of Way Employees  
vs.  
Norfolk and Western Railway Company

STATEMENT OF CLAIM:

1. Carrier violated the effective Agreement dated April 1, 1951 on August 4, 1976, by unfairly and unjustly dismissing Claimants T. L. Weatherspoon and M. A. Wright from Carrier service.

Claimants T. L. Weatherspoon and M. A. Wright shall be reinstated to Carrier service, compensated for all lost wages, and shall have all seniority and other rights returned unimpaired.

FINDINGS: This Board upon the whole record and all the evidence finds that:

The Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as amended.

OPINION:

On August 4, 1976, the Claimants, members of a Tie Gang, were observed by members of supervision engaged in an altercation, such events occurring during working hours. The Claimants, both short-service employees, were removed from duty on that date.


The Organization's defense, as evidenced by the record, is (1) that the discipline was excessive in that the Claimants were engaged in "horseplay," and (2) that the charging officer was not present for the hearing and thus the Claimants were denied a fair and proper hearing.

We find no support for the Organization's claim that the hearing procedure somehow prejudiced the Claimants' rights; to the contrary, the record demonstrates a sufficient showing that the Claimants were, indeed, engaged in either horseplay or a fight on Carrier property and during work hours. In either case, they exposed the Carrier to a potential liability if injury to them or others had occurred. With the full expectation that they will have learned a lasting lesson out of this incident, we shall return them to work under certain specific circumstances.

AWARD:

Claimants shall now be returned to service with full seniority rights but without pay for time lost.

  
James F. Searce  
Neutral Member

  
G. C. Edwards  
Carrier Member

  
Fred Wurpel, Jr.  
Organization Member

Dated this 1<sup>st</sup> day of Feb., 1980 at Cleveland, O.